

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #9	CCRB Case #: 201510344	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/10/2015 3:55 PM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 5/10/2017	EO SOL 5/10/2017	
Date/Time CV Reported Mon, 11/30/2015 1:05 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/07/2015 3:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carlos Serrano	1979	946236	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Nacarlo	05138	950931	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Serrano	Discourtesy: Sgt. Carlos Serrano acted discourteously toward § 87(2)(b)	§ 87(2)(b)
B.SGT Carlos Serrano	Force: Sgt. Carlos Serrano used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Carlos Serrano	Abuse: Sgt. Carlos Serrano issued a summons to § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)

Case Summary

On November 10, 2015, at approximately 3:55 p.m., § 87(2)(b) was inside of a deli located at § 87(2)(b) in Queens. This deli is down the street from § 87(2)(b). Sgt. Carlos Serrano, a sergeant in the 114th Precinct, was conducting enforcement on the corner in front of the deli and the school, which becomes crowded with students after dismissal.

§ 87(2)(b) alleged the following: Sgt. Serrano approached him inside of the store and poked him in the chest as he told him to leave (**Allegation A**). Sgt. Serrano then pushed § 87(2)(b) out of the deli (**Allegation B**). Sgt. Serrano instructed officers, including PO Joseph Nacarlo of the 114th Precinct, to handcuff § 87(2)(b) and issue him a summons for disorderly conduct (Board Review 17) (**Allegation C**). § 87(2)(b) was released from the van after receiving the summons from PO Nacarlo. § 87(2)(b)'s criminal case has been dismissed (Board Reviews 20 and 21).

§ 87(4-b), § 87(2)(g)

§ 87(2)(g)

Video footage was obtained from the deli (Board Review 4). It will be referenced throughout this report; however, the full video is located in IA #15. The camera angle located in the top right of the screen shows the best view of this incident.



201510344_20151210_1206_DM.mp4

Mediation, Civil and Criminal Histories

- Mediation was presented to § 87(2)(b) via telephone on December 8, 2015, and during his interview on December 9, 2015. § 87(2)(b)
- On February 18, 2016, a FOIL request was submitted to the New York City Comptroller's Office to determine if a Notice of Claim had been filed in regard to this incident. As of this writing, they have not responded to the FOIL request (Board Review 11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB case involving § 87(2)(b) (Board Review 14).
- Sgt. Serrano has been a member of service for 8 years and has three cases with six total allegations. In case number 201207176, the sole allegation was a stop, and it was closed as exonerated. In case number 201300772, the sole allegation was physical force, and it was closed as complainant uncooperative (Board Review 15).

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)

Allegation A -Discourtesy: Sgt. Carlos Serrano acted discourteously toward § 87(2)(b)

Allegation B -Force: Sgt. Carlos Serrano used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was waiting for his friends near the deli and outside of § 87(2)(b). Sgt. Serrano exited his vehicle, which was parked next to the school and the deli, and said, “Either you walk home, or you get on the bus. Get out of here.” § 87(2)(b) walked closer toward the school, but did not see his friends. He walked across § 87(2)(b) to the gas station across the street. He did this to move away from the other students and the police officers. After walking around the intersection for approximately ten minutes, he entered the deli. Sgt. Serrano’s vehicle remained parked but Sgt. Serrano did not say anything to § 87(2)(b). Once § 87(2)(b) entered the deli, he purchased a sandwich, and stood near the window, eating his sandwich. Many other students were inside of the deli. Through the window, § 87(2)(b) could see Sgt. Serrano and approximately four or five other officers looking at him through the window. § 87(2)(b) did not say anything to the officers through the window, or vice versa. Approximately thirty minutes after § 87(2)(b) entered the deli, Sgt. Serrano entered the deli and walked directly toward § 87(2)(b). “What are you doing here?” Sgt. Serrano said to § 87(2)(b). § 87(2)(b) replied, “I came to eat. I’m getting another sandwich.” Sgt. Serrano said, “Another one?” § 87(2)(b) replied, “Can’t I eat?” Sgt. Serrano said, “Don’t get slick with me,” and poked § 87(2)(b) three times in his chest with his fingers. § 87(2)(b) told Sgt. Serrano not to touch him. This seemed to make Sgt. Serrano angrier, and he grabbed § 87(2)(b) by the front of the jacket and pulled him toward the doorway. Sgt. Serrano said, “I’ll throw you out of the store.” Sgt. Serrano pushed § 87(2)(b) on the back with both hands, sending him stumbling onto the sidewalk (Board Review 1).

Sgt. Serrano stated that this corner is a “condition” within the precinct, meaning officers are requested to conduct enforcement at this location. The intersection of § 87(2)(b) is crowded with students every day upon dismissal from the nearby § 87(2)(b). On this date, he first saw § 87(2)(b) when he was standing outside of the deli at this intersection. § 87(2)(b) was standing with two unidentified friends. Sgt. Serrano approached § 87(2)(b) and his friends and said, “Can you do me a favor? Move along.” § 87(2)(b) said, “You are nobody to tell me anything.” Sgt. Serrano said, “Look, do me a favor. Just don’t hang out on the corner.” § 87(2)(b) and his friends walked away. The corner was crowded with students. Approximately ten minutes after § 87(2)(b) walked away, Sgt. Serrano entered the deli “to make sure that people were not just hanging out there; that they were buying things and moving along.” There were approximately 20 students inside of the store. Sgt. Serrano first

said that he “approached § 87(2)(b) again,” but then corrected himself, saying, “Not only him. I was talking to all of the students.” Sgt. Serrano said, “Guys, do me a favor—as soon as you’re done buying your stuff, get out of the store so other people can get in.” At this point, Sgt. Serrano noticed § 87(2)(b) was inside of the store. § 87(2)(b) responded, “You’re nobody to tell me anything.” Sgt. Serrano said that his attention was brought to § 87(2)(b) because of his attitude. Sgt. Serrano did not notice if § 87(2)(b) was eating anything, and there was never a discussion about him purchasing anything. Sgt. Serrano told § 87(2)(b) that he had been speaking to everyone, and not just § 87(2)(b). Sgt. Serrano said to § 87(2)(b) “You’re going to leave, or I’m going to have to take you out.” Sgt. Serrano first denied poking § 87(2)(b) in the chest. Upon viewing the video footage, he acknowledged that he poked § 87(2)(b) in the chest. His justification for doing so was that he “did this in reaction to § 87(2)(b)’s comment.” He also poked him to emphasize that he was telling § 87(2)(b) to leave the store.

§ 87(2)(b) did not leave. At that point, Sgt. Serrano grabbed § 87(2)(b)’s left arm and took him out of the store. As he did this, § 87(2)(b) pushed against Sgt. Serrano, trying to prevent him from moving him toward the door. Sgt. Serrano was able to overcome his resistance by pushing harder on § 87(2)(b)’s arm. Once § 87(2)(b) and Sgt. Serrano reached the threshold of the door, § 87(2)(b) stopped moving, and did not walk out of the store. Sgt. Serrano let go of § 87(2)(b) and told him to keep moving. § 87(2)(b) did not move. Sgt. Serrano “nudged” § 87(2)(b) by placing both his hands on § 87(2)(b)’s back. § 87(2)(b) took one step outside of the store. Upon viewing the video footage, Sgt. Serrano stated that he “grabbed § 87(2)(b) and pushed him” before “nudging” him out of the store (Board Review 2).

PO Nacarło stated that he could not say when he first saw § 87(2)(b). He did not see him in front of the school. PO Nacarło followed Sgt. Serrano into the deli, and Sgt. Serrano and § 87(2)(b) “had some sort of dialogue” inside of the deli. PO Nacarło did not recall the specifics of this conversation. PO Nacarło stated that he never saw Sgt. Serrano poke § 87(2)(b) in the chest. PO Nacarło first said that § 87(2)(b) exited the deli by “walking out.” Upon further questioning, he acknowledged that he saw Sgt. Serrano push § 87(2)(b) on the front of his body outside of the deli (Board Review 3).

The video footage shows the deli crowded with students. (The camera angle in the top right of the screen shows the best view of this incident.) § 87(2)(b) who is wearing a black puffy jacket and jeans, is standing near the window § 87(2)(b). When Sgt. Serrano enters the deli, § 87(2)(b) is looking down at his phone. Sgt. Serrano walks directly toward § 87(2)(b) with PO Nacarło behind him. Sgt. Serrano appears to be speaking to § 87(2)(b) and § 87(2)(b) is still looking at his phone. Sgt. Serrano does not appear to say anything to any other student, and none of the other students in the store move. Approximately seven seconds after Sgt. Serrano stopped in front of § 87(2)(b) he pokes him in the chest with his right hand. § 87(2)(b) takes one step back, and Sgt. Serrano appears to continue speaking to him. Approximately five seconds after Sgt. Serrano poked him, Sgt. Serrano grabs the front of § 87(2)(b) pulls him toward the door, and pushes him. Sgt. Serrano releases § 87(2)(b) approximately two seconds after initially grabbing him. § 87(2)(b) exits through the door, and PO Nacarło and Sgt. Serrano follow him. It is impossible to see what happens once they are outside (Board Review 4).



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Patrol Guide 203-09 states that officers should be courteous and respectful during interactions with the public (Board Review 7). In OATH case PD v. Miller, the Administrative Law Judge found that an action that is perceived by a complainant to be discourteous is misconduct if it is unnecessarily insulting and does not serve a legitimate law enforcement purpose PD v. Miller 2127/00 (2000) (Board Review 22). Patrol Guide 203-11 states that officers must use the minimum amount of force necessary (Board Review 5).

§ 87(2)(g)

[REDACTED]

Allegation C –Abuse of Authority: Sgt. Carlos Serrano issued a summons to § 87(2)(b)

§ 87(2)(b) said that he was searched and handcuffed before being placed inside of the van, where PO Nacarlo wrote him a summons. Once § 87(2)(b) was removed from the van, PO Nacarlo handed him the summons. § 87(2)(b) read that the summons was for “Disorderly Conduct--Obstructing Pedestrian Traffic.”

Sgt. Serrano stated that after he “nudged” § 87(2)(b) out of the store, he told PO Nacarlo to issue § 87(2)(b) a summons for disorderly conduct. Sgt. Serrano stated that he did not recall if he instructed PO Nacarlo to choose a specific subsection of the disorderly conduct statute. His stated reason for issuing § 87(2)(b) a disorderly conduct summons was because he was “acting disorderly by not listening to officers’ directions.” There was no other factor that went into his decision to give § 87(2)(b) a disorderly conduct summons (Board Review 2).

PO Nacarlo’s memo book stated that he was “informed by Sgt. Serrano that he observed the defendant obstruct pedestrian traffic” (Board Review 18). The summons PO Nacarlo wrote stated “Discon—Obstructing Pedestrian Traffic,” and “Summoning officer was informed by Sgt. Serrano that he observed the defendant obstructing pedestrian traffic.” PO Nacarlo crossed out the line that states, “I personally observed the commission of the offense charged herein,” (Board Review 17).

PO Nacarlo stated that he did not observe the violation that Sgt. Serrano claimed to have observed. Inside of the deli, § 87(2)(b) was congregating along with many other students. Once Sgt. Serrano pushed § 87(2)(b) outside of the deli, the conversation between Sgt. Serrano and § 87(2)(b) escalated. Sgt. Serrano told § 87(2)(b) to leave. PO Nacarlo did not recall how § 87(2)(b) responded to this. When asked why Sgt. Serrano was telling § 87(2)(b) to leave, PO Nacarlo said, “We were trying to get everybody to leave.” PO Nacarlo did not know of any other reason why Sgt. Serrano was telling § 87(2)(b) to leave. PO Nacarlo never saw § 87(2)(b) do anything for which he could have been summonsed or arrested. Sgt. Serrano instructed PO Nacarlo to issue § 87(2)(b) a summons for obstructing pedestrian traffic. PO Nacarlo had no conversation with Sgt. Serrano about what had occurred. An unidentified officer placed § 87(2)(b) in handcuffs without any difficulty. PO Nacarlo described § 87(2)(b)’s demeanor as very calm. PO Nacarlo wrote § 87(2)(b) a summons inside of the van, and § 87(2)(b) was released from the van after approximately five minutes. PO Nacarlo stated that the students were loud and disorderly, as they always are, but no other students were summonsed or arrested on this date (Board Review 3).

New York Penal Law 240.20 states that an individual is guilty of disorderly conduct when he or she intends to cause public inconvenience, annoyance, or alarm (Board Review 19). An individual can only be guilty of disorderly conduct if his or her actions extend beyond a dispute and become a potential or immediate public threat People v. Gonzalez NY Slip Op 05515 (2015) (Board Review 6).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
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[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
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Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date